

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

USOR SITE PRP GROUP,

Plaintiff,

v.

A&M CONTRACTORS, INC., et al.

Defendants

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CA NO. 4:14-cv-2441

TEXAS STATE AGENCY DEFENDANTS' NOTICE OF APPEAL

Notice is hereby given that the following defendants appeal to the United States Court of Appeals for the Fifth Circuit from the interlocutory order denying the Texas State Agency Defendants' Motion to Dismiss for Lack of Subject-matter Jurisdiction (Doc. No. 3973, May 5, 2017).¹

The Texas State Agency Defendants (or "Appealing Defendants") are: Texas Department of Criminal Justice, Texas Department of Transportation, Texas General Land Office, Texas Railroad Commission, Stephen F. Austin State University, Texas A&M University, Texas Southern University, Texas State University System, University of Houston, and The University of Texas System.

This appeal is taken pursuant to 28 U.S.C. § 1291 and the collateral order doctrine. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 147 (1993) (holding

¹ The District Court previously entered two orders that misidentified the Appealing Defendants' 12(b)(1) motion to dismiss as part of a group of 12(b)(6) motions, by erroneously including the docket number of the 12(b)(1) motion in the orders. *See Order on Motions to Dismiss* (Doc. No. 3835, Mar. 24, 2017); *Corrected Order on Motions to Dismiss* (Doc. No. 3868, Mar. 31, 2017). It was unclear whether those orders actually disposed of Appealing Defendants' 12(b)(1) motion. The Defendants timely filed a motion to correct those orders (Doc. No. 3892, Apr. 7, 2017), which suspended the time for appeal under Fed. R. App. P. 4(a)(4). To the extent the earlier orders encompassed the Appealing Defendants' 12(b)(1) motion, the District Court's most recent order has superseded them. However, for the sake of completeness, the Defendants hereby appeal the earlier two orders as well.

that the denial of a motion to dismiss filed by a state entity on the basis of Eleventh Amendment immunity may be immediately appealed pursuant to the collateral order doctrine). The filing of this interlocutory appeal divests the district court of jurisdiction to proceed against the Texas State Agency Defendants. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *Williams v. Brooks*, 996 F.2d 728, 729-30 & n.2 (5th Cir. 1993).

Respectfully submitted this 26th day of May 2017.

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CERTIFICATE OF SERVICE

I certify that on the 26th day of May 2017, a copy of the foregoing Texas State Agency Defendants' Notice of Appeal was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing upon all parties. Parties may access the filing through the Court's Electronic Case Filing System.

/s/ *Thomas H. Edwards*

Thomas H. Edwards